IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 818 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJNIKNANT L CHAUDHARI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 818 of 1992

MR YN OZA for Petitioner No. 1-11

MR KT DAVE, AGP for Respondent No. 1-2

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 01/10/2002

ORAL JUDGEMENT

#. By filing this petition under Article 226 of the Constitution of India, the petitioners, who are eleven in

number, have prayed to issue a writ of Mandamus or any other appropriate writ or order, directing the respondent to appoint all the petitioners on the post of Unarmed Police Constables from April 1, 1991 with all the consequential and incidental benefits including continuity of service and full backwages.

#. An advertisement was issued by the respondents inviting applications from eligible candidates for the post of Police Constables. The basic qualifications required for the post were also indicated in the advertisement. Pursuant to the advertisement, the petitioners applied for the said post, and were called for physical test. The case pleaded by the petitioners is that they cleared the physical test and were therefore called upon to undergo a written test. According to the petitioners, they successfully passed written test and were therefore called for oral interviews which were scheduled to take place on February 4/8, 1991. On February 8, 1991, about 15000 candidates remained present for oral interview, and oral interviews were conducted by five Deputy Commissioners of Police. The case pleaded by the petitioners is that Mr.Mahapatra, who was also one of the members of the Oral Interview Committee, cleared many candidates arbitrarily resulting into grave injustice to the petitioners and others. What is claimed by the petitioners is that the petitioners met the then Police Commissioner, on whose suggestion the petitioners met one Mr.Mathur, who was then holding the post of Assistant Commissioner of Police and pointed out the illegalities committed by Mr.Mahapatra in the oral interviews which were taken on February 8, 1991. The case of the petitioners is that though Mr.Mathur was satisfied that Mr.Mahapatra committed illegalities while holding oral interviews, no steps were taken by him for the purpose of appointing the petitioners on the post of Unarmed Police Constables. According to the petitioners, twenty marks were prescribed for oral interview, but Mr.Mahapatra had given marks out of ten, which was illegal and violative of the principles enshrined in Articles 14 and 16 of the Constitution of India. What is maintained by the petitioners is that those candidates who had performed poorly at physical test and written test are selected but the petitioners who had fared well at the physical test and written test are not selected which is arbitrary and contrary to the legal position as settled by various judicial pronouncements. Under the circumstances, the petitioners have filed the present petition and claimed reliefs to which reference is made earlier.

#. Though served, none of the respondents has filed

reply affidavit controverting the averments made in the petition.

#. I have heard the learned counsel for the parties and considered the documents forming part of the petition.

#. The prescription of twenty marks for oral interview is not subject matter of challenge in the present petition. Even otherwise, said prescription cannot be regarded as illegal in view of the decision of the Supreme Court in State of Maharashtra and others V/s. Husen s/o. Jafar Sheikh and others - 1994 Suppli.(1) SCC 468.

#. As noticed earlier, the whole petition is based on the allegations of malafides alleged against Mr.Mahapatra who was then the Deputy Commissioner of Police and was also one of the members of the Oral Interview Committee. It is well settled that persons against whom malafides are alleged should be joined as parties and given opportunity to explain their conduct. In the present petition, though serious allegations of malafides have been alleged against Mr.Mahapatra, he is not joined as one of the respondents and is denied opportunity to explain his conduct. In State of U.P. V/s. Yamuna Shanker Mishra and anr. - (1997)4 SCC 7, the Supreme Court refused to accept the allegations of malice and arbitrariness to a Reporting Reviewing Officer who had made adverse remarks against the respondent on the ground that the Reporting/ Reviewing Officer was not impleaded as a party and had no opportunity to explain his conduct. In All India State Bank Officers' Federation V/s. Union of India and others - (1997)9 SCC 151, the Supreme Court has made the following pertinent observations in paragraph-22 of the reported decision:

"22. There is yet another reason why this contention of the petitioners must fail. It is now settled law that the person against whom mala fides are alleged must be made a party to the proceeding. The allegation that the policy was amended with a view to benefit Respondents 4 and 5 would amount to the petitioners contending that the Board of Directors of the Bank sought to favour Respondents 4 and 5 and, therefore, agreed to the proposal put before it. Neither the Chairman nor the Directors, who were present in the said meeting, have been impleaded as respondents. This being so the petitioners cannot be allowed to raise the allegations of mala fides, which allegations, in fact, are without

merit."

Applying the principle laid down by the Supreme Court in the abovereferred two decisions to the facts of the present case, it is found that Mr.Mahapatra, the then Deputy Commissioner of Police, who was one of the members of the Oral Interview Committee, is not impleaded as a party respondent and therefore, the petitioners cannot be allowed to raise the allegations of malafides against him. Even otherwise, it is settled law that since the allegations of malafides are likely to have serious consequence, sufficient particulars and cogent material making out a prima facie case must be given in the petition. The burden of proving malafides is on the person making the allegations and the burden is very heavy. A bare perusal of the petition makes it more than clear that the petitioners have failed to place on record sufficient particulars and cogent material making out a prima facie case.

#. On overall view of the matter, it becomes clear that the petitioners have not established their case that any irregularities were committed by the members of the Oral Interview Committee and therefore, the petition is liable to be dismissed.

#. For the foregoing reasons, the petition fails and is dismissed. Rule is discharged with no order as to costs.

(J.M.Panchal, J.)

(sunil)